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U.S. Citizenship
and Immigration
Services

FILE: SRC 02 268 51943 Office: TEXAS SERVICE CENTER Date: **AUG 04 2004**

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is engaged in the retail sale of "convenience items." It presently employs the beneficiary as its president, and seeks to extend the beneficiary's employment for an additional two years. The petitioner filed a petition to extend the beneficiary's classification as a nonimmigrant intracompany transferee.

The director denied the petition concluding that the petitioner did not demonstrate the beneficiary's employment in the U.S. entity in a primarily managerial or executive capacity. Specifically, the director noted that the petitioner failed to provide evidence that the beneficiary's three subordinates are supervisory, professional, or managerial employees as required in the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(B)(2). The director also noted that although the beneficiary was given a managerial or executive title, "it would appear that the beneficiary will be engaged primarily in the day-to-day operations of the business itself."

In an appeal dated February 7, 2003, counsel contends that the director solely relied on the petitioner's staffing levels in his denial of the petition. Counsel also asserts that the director did not consider the beneficiary's "actual job duties and responsibilities of the position" and failed to address in her decision whether the beneficiary is employed as a "functional manager/executive [sic]." Counsel indicates that a brief and evidence in support of the appeal will be forwarded to the AAO within thirty days of this appeal. As of this date, a review of the record reveals no subsequent submission. The record will be considered complete.

Upon review, the director did not rely solely on the petitioner's staffing levels in her decision. The director evaluated the beneficiary's position description, the petitioner's organizational structure, and the evidence submitted in support of the petitioner's claims. It is appropriate for CIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. *See, e.g. Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Finally, it is noted that the petitioner never claimed that the beneficiary was employed as a functional manager, but instead claimed the beneficiary "oversee[s] the work of professional employees." The term "function manager" applies generally when a beneficiary does not supervise or control the work of a subordinate staff but instead is primarily responsible for managing an "essential function" within the organization. *See* section 101(a)(44)(A)(ii) of the Act, 8 U.S.C. § 1101(a)(44)(A)(ii). Accordingly, it would have been inappropriate for the director to evaluate the beneficiary as a functional manager.

The regulation at 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel's incorrect and blanket assertions on appeal does not sufficiently support this appeal. The director did a thorough analysis and specifically addressed insufficiencies in the evidence that failed to meet the petitioner's burden of proof. Counsel did not specifically identify any particular fact that was not properly considered by the director in making her decision. Counsel's general objections to the denial of the petition, without specifically identifying any errors on the part of the director, are insufficient to overcome the

well-founded conclusions the director reached based on the evidence submitted by the petitioner. Additionally, the petitioner did not cite any precedent case law that would support its assertions on appeal. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Inasmuch as the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for this appeal, the regulations mandate the summary dismissal of the appeal.

ORDER: The appeal is summarily dismissed.